



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2013

Mr. Tuan A. Nguyen  
Staff Attorney  
City of Houston  
1200 Travis  
Houston, Texas 77002-6000

OR2013-21932

Dear Mr. Nguyen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508668 (ORU No. 13-6023).

The Houston Police Department (the "department") received a request for issue record number 43498-2013 and any document reflecting whether the complaint was sustained. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Generally, only highly intimate information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entirety of the information must be withheld to protect the individual's privacy. In this

instance, you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note CHRI does not include driving record information. *Id.* § 411.082(2)(B). You claim a portion of the submitted information constitutes CHRI. Upon review, we find the department must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law. However, you have failed to demonstrate how any portion of the remaining information at issue constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of this state or another state or country. *Id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>2</sup>

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note, generally, an individual's name or address is not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). Nevertheless, in this instance, we find the identifying information of the individual we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold (1) the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law; (2) the motor vehicle record information we have marked under section 552.130 of the Government Code; and (3) the identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.<sup>3</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>2</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>3</sup>We note this requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023. Therefore, if the department receives another request for this information from an individual other than this requestor, the city must again seek a decision from this office.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 508668

Enc. Submitted documents

c: Requestor  
(w/o enclosures)